

Master Advocate Institute Series:

A Guide to Success in Complex Litigation: Effective Handling of a Federal Tax Case

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**These Continuing Legal Education Options Network
Titles are Available for Videotape CLE Programming for
individuals or Law Firms:**

**“Impact of the New Federal Rules on Discovery and Evidence
Practice”**

4 CLE Credit Hours

In December 2001, significant changes became effective in the federal rules that affect every lawyer practicing in federal court. The main thrust of the rule changes were to "re-federalize" the practice, preventing local federal courts from controlling practice in their courts with local rules, as much as they had. There were important changes in discovery and in evidence practice, especially as regards expert witnesses and admission of business records. Keeping evidence out has also been more clearly addressed. Most CLE programs covered these changes by simply going through the rules. This unique program put these changes in context, from the vantage point of how to prepare and present one's case, how to re-do one's forms and integrate the changes into one's practice, emphasizing the opportunities and pitfalls. The panel included experienced federal practitioners from several states and a federal judge.
(Produced in January 2001)

“The Ultimate Trial Notebook”

4 CLE Credit Hours

Trying a lawsuit in the “media age” presents challenges lawyers have never faced before. The citizens who become judges and jurors are bombarded with powerful messages on television, by radio, in the movies, and in print that make most presentations that one sees in the courtroom pale by comparison. The task confronting lawyers today is not just to present information to the judge and jury, but to somehow *persuade* these message-saturated arbiters of our client's future that we are more right than our opponent. Elements of persuasion have been studied for thousands of years, but only in the last century have they been experimentally tested and scientifically organized. Few lawyers have paid much attention to this mounting library of fascinating data. Fewer still have

systematically applied the discoveries of forensic psychologists and of those who study interpersonal communications and small-group dynamics to the chore of courtroom advocacy. Most of us got trained in advocacy by the seat of our pants, trying to copy someone else. This program presents five of the most successful trial lawyers in the country who got that way by developing an understanding of how the players in the courtroom drama perceive and feel the world presented to them in that context. They know how to read and change the meta-messages that are constantly flowing around and behind our words, the messages that *really* control the outcome. The usual elements of preparation for trial, the tabs that would go into the usual trial notebook, are important. You must do the homework, research the law, write good pleadings, evaluate the case, understand the probable court's charge. You must be diligent about the logistics, paying attention to deadlines, arranging and preparing witnesses, gathering documents and preparing exhibits. Many lawyers believe that when they have gone through such a drill, ticking off the items on the checklist during trial, they have done their due diligence. Success is won by sweat and good intentions. But this program answers the one question that most affects winning: ***how do you focus all the behaviors you can control, all the preparations, the documents, the exhibits on one single point: persuasion of the judge and jury.*** Viewing the trial through this lens reveals that some trial behaviors are far more important than others.

**Master Advocate Institute Series*:
“Effective Direct and Cross-Examination”**

4 CLE Credit Hours

“Effective Direct and Cross Examination,” will addresses the important topic of how to effectively try cases and avoid dangerous pitfalls during direct and cross examination. On our panel today are four of the most knowledgeable lawyers in the country to highlight the issues most directly affecting working lawyers and their clients. Our expert panel illustrates key points through the use of mini-demonstrations.

**Master Advocate Institute Series*:
“Expert Witness Forum”**

4 CLE Credit Hours

The second in the Master Advocate's series will explore the critical litigation skills associated with the effective use of experts at trial.

**Master Advocate Institute Series*:
“Ambushes & Minefields in the Courtroom”**

4 CLE Credit Hours

Experienced, and successful practitioners understand that it is as important to avoid mistakes during trial as it is to execute a brilliant trial strategy. Research shows that lawyer missteps in court cost the client dearly. Many things at trial are not within the lawyer's control. Its incumbent upon the successful lawyer to control the things she can. The Continuing Legal Education Options Network, in cooperation with the National Institute for Trial Advocacy, presents the third in its Master Advocates Institute Series, “Avoiding Ambushes and Minefields in the Courtroom”.

**Master Advocate Institute Series*:
“The Art of Winning Before Trial”**

4.5 CLE Credit Hours

The Continuing Legal Education Options Network presents the latest installment in its Master Advocate Institute Series, this one focusing on the critical pre-steps skills necessary for success at trial. *Winning Before Trial*, developed in cooperation with the nation's leader in trial advocacy training, the National Institute for Trial Advocacy (NITA), will explore the latest discovery techniques, as well as the most effective way to prepare for trial. A panel of some of the nation's leading trial lawyers will instruct, discuss and demonstrate how the effective litigator prepares for trial. The broadcast will have a special one hour treatment of ethical issues in the trial preparation phase.

**Master Advocate Institute Series*:
“A Guide to Success in Complex Litigation:
Effective Handling of a Federal Tax Case”**

4 CLE Credit Hours

Examine complex litigation issues through the prism of a federal tax trial. Senior trial attorneys from the government and defense bar will examine critical issues like effectively dealing with the government's investigation. Gathering, organizing and managing volumes of evidence. The proper handling of documents in the face of a government summons or subpoenas. Recent changes in the law regarding destruction of evidence, obstruction of justice and IRS Circular 230 will be explored. Selecting and preparing expert witnesses. Motions practice. How to properly prepare for a complex civil or criminal case. Avoiding common pitfalls. Special focus on "How to Break Down Complex Issues to a Jury" and “The Art of

Jury Persuasion in Complex Cases” Learn how trial veterans deal with adverse expert witnesses. Practical pointers on negotiations with the government and other 3rd parties towards parallel resolution of civil and criminal matters short of trial will be reviewed. Finally, what ethical issues emerge from this type of litigation and how should the practitioner make sure to measure up.

**The Master Advocate Institute Series”™ refers to an ongoing group of trial advocacy and litigation CLE seminars designed to become a complete library and resource for lawyers and law firms involved in litigation. CLEON will produce several each year.*

About the Faculty

Charles W. Blau, JD, is a partner in the law firm of Meadows, Owens, Collier, Reed, Cousins & Blau, L.L.P., in Dallas, Texas. He focuses his practice on the representation of individuals and entities that are accused of white collar crimes. Mr. Blau assists companies in discrete internal investigations both before and during governmental inquiries. He also aids corporations in fashioning, enacting and administering compliance and ethics programs. He regularly advises clients how to prevent and detect criminal, civil and administrative problems, often in conjunction with independent accountants and investigators. His practice concentration and experience includes criminal law and litigation: Tax Fraud, Criminal Anti-Trust and Securities Fraud, Defense Procurement Fraud, Environmental Crimes, Health Care Fraud, Bank Fraud and Money Laundering Crimes. Mr. Blau was an Assistant United States Attorney for the Southern District of Indiana in 1976 and held various federal prosecutorial positions through 1987, including Associate Deputy Attorney General of the United States. He is a prolific author and speaker. He is an active member of the ABA White Collar Crime Subcommittee and served as a co-chair of the Southwest Regional Committee of the organization. He is member of the Florida, Indiana and Texas bar associations as well as many other professional organizations. He received his undergraduate degree from Indiana University, his law degree from the University of Louisville and his L.L.M. in taxation from Georgetown University.

William R “Trey” Cousins, III, practices with the Dallas law firm of Meadows, Owens, Collier, Reed, Cousins & Blau, L.L.P. specializing in tax controversies. Trey is a capital partner elected in 1986. He appeared on the letterhead in 1994 and has served on the firm’s management committee. He has first chair trial experience in criminal and civil tax litigation as well as federal white-collar criminal cases. He has been quoted in a variety of publications, including *Forbes*, *Fortune*, *Working Woman*, *People*, *American Lawyer*, *Texas Lawyer*, *Bloomberg Wealth Manager* and *The Dallas Morning News*, etc. Trey is a past Director of the Fort Worth Chapter of the Texas Society of CPAs, and as past Chairman of the Fort Worth Tax Institute. He is a past Director of the TSCPA, and is the past Chairman of the IRS Relations Committee of the TSCPA. Trey is a recognized speaker on a variety of substantive tax, tax procedure and ethics topics. He is a member of the ABA, State Bar of Texas, AICPA and Texas Society of CPA Chapters.

Karen L. Hawkins is a member of the San Francisco law firm of TAGGART & HAWKINS. She received her J.D. and MBA-Tax degrees from Golden Gate University. She also holds an M.Ed. from the University of California, Davis. Ms. Hawkins is a past Chair of the Taxation Section of the State Bar of California, a past chair of the ABA Taxation Section Subcommittee on Civil Penalties, and the ABA Taxation Section IRS Liaison Meetings Committee. She has served on the Council of the ABA Taxation Section since 1998, and is currently the organization’s Vice-Chair Professional Services. Ms. Hawkins chaired the IRS Northern California District Director Practitioner Panel. She is also a Fellow of the

American College of Tax Counsel. Ms. Hawkins writes and speaks extensively on all aspects of civil and criminal tax controversy issues, attorney's fees awards and on ethics in tax practice.

Paula M. Junghans is a partner in the Washington DC office of Piper Rudnick LLP, specializing in criminal and civil tax controversy matters, white collar criminal defense and other litigation. She served as the Acting Assistant Attorney General in the Department of Justice Tax Division from January 2000 to January 2001, and as the Deputy Assistant Attorney General for criminal enforcement from October 1998 through December 1999. From 1976 through 1998, Ms. Junghans was in private practice in Baltimore, Maryland, handling a variety of tax controversy, criminal and litigation matters. She is a member of the American College of Tax Counsel, a former chair of the ABA Tax Section's Committee on Civil and Criminal Tax Penalties, and former president of the Maryland Criminal Defense Attorneys Association. She was the co-author of Federal Tax Litigation (Warren Gorham and Lamont, 1992 and supps.) and is a frequent speaker on tax procedure and white collar criminal matters. Ms. Junghans graduated from the University of Maryland School of Law in 1976 and from the College of Notre Dame of Maryland in 1971.

Charles M. Meadows, JR., is a member of the American College of Trial Lawyers. His areas of practice include Federal Income Tax Litigation and White Collar Legal Defense – Tax, Environment, Health Care, Insurance, Government Contract Fraud, Computer and Copyright Fraud and Complex Business Litigation. He has over 25 years of experience representing public/private corporations and individuals in litigation matters. He is Board Certified in Tax Law by the Texas Board of Legal Specialization and is a Certified Public Accountant. Mr. Meadows is a frequent speaker at national and state legal and accounting conferences on various litigation matters. He was recognized by **D Magazine** as one of the City's best White Collar Defense Attorneys (2001 & 2003) and by **Texas Lawyer** as one of the Top Five Tax Attorneys in Texas (2002). He was also selected to be included in **The Best Lawyers in America** (2003-2004).

Charles J. Muller III, is a partner with the firm of Strasburger & Price, L.L.P., in its San Antonio office. He has tried more than 50 jury trials to verdict, with matters including civil, criminal, malpractice, tax, commercial, and financial. Mr. Muller's tax controversy practice includes federal and state civil tax litigation; federal criminal tax litigation, including related white collar crime representation; property tax disputes and litigation; representation of attorneys and accountants in malpractice cases and discipline proceedings; representation of taxpayers before IRS Appeals offices; and representation of taxpayers during civil and criminal IRS examinations. Mr. Muller is a recipient of the Attorney General's John Marshall Award for Outstanding Legal Achievement in the Trial of Complex Litigation. He is also listed in *Best Lawyers in America*. He is a prolific author. His works include, *Record Retention and Destruction Policies: What Must You Keep and*

For How Long? and When Can You Destroy It? Record Retention and Destruction — The Andersen Issue, Technology Pitfalls, and Other Lessons (co-author), and *The High Cost of White Collar Crime: What Corporate Counsel Needs to Know About the Emerging Use of Federal Criminal Law to Obtain Regulatory Compliance, IRS Tracking Unreported Income Through Offshore Credit Cards* (co-author with Farley Katz), SAN ANTONIO BUSINESS JOURNAL (February 2001).

Is Your Company Safe? White Collar Crime Issues Facing Corporate America (speaker and co-author with Farley Katz and Anthony Rebollo), Strasburger & Price, LLP Corporate Counsel Series (2000).

Phillip Umphres is an Assistant United States Attorney in Dallas, Texas. He is a native of Amarillo, Texas, a 1977 graduate of the University of Texas at Austin (where he majored in Accounting) and a 1980 graduate of Harvard Law School. Following law school Mr. Umphres served for 4 years as a criminal trial lawyer in the U.S. Army Judge Advocate General's Corps. After leaving the Army in 1984, Mr. Umphres worked as a civil trial lawyer in the Dallas office of Akin, Gump, Strauss, Hauer and Feld, where he was a partner engaged primarily in general business litigation. Since 1991 he has been an Assistant United States Attorney in Dallas, where he specializes in the investigation and prosecution of white collar frauds, including federal income tax offenses. During his time at the US Attorney's Office he has served in several supervisory and coordinating roles, most recently as the Criminal Health Care Fraud Coordinator for the Northern District of Texas. Mr. Umphres is a frequent lecturer and speaker on panels and legal programs, particularly those addressing white collar fraud and health care fraud.

A Guide to Success in Complex Litigation: Effective Handling of a Federal Tax Case

Program Outline*

(All times shown as Central Time Zone)

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| 8:30 am | Introductions and Course Overview by Moderator |
| 8:40 am | Part 1 |
| | Handling Valuation witnesses in tax cases. |
| | Demonstration A: Direct and Cross Examination of the Valuation Witness |
| 9:45 am | Part 2 |
| | Appellate Conference Opportunities |
| | Demonstration B: Appellate Conference |
| 10:45 am | Break |
| 11:00 am | Part 3 |
| | Pre-trial Motions in Criminal Cases |
| 12:00 am | Part 4 |
| | Sentencing Practice in Tax Cases |
| | Demonstration C: Argument to the Judge on Sentencing |
| 12:55 am | Closing and Adjourn |

. *Note: This outline is produced several weeks before the live program is delivered and is subject to adjustment by the faculty.

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Section 3 Trial of a Criminal Tax Case

Section 4 Sentencing Practice in Tax Cases

Hypothetical # 3 Sentencing Argument